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# FBI Law Enforcement Bulletin

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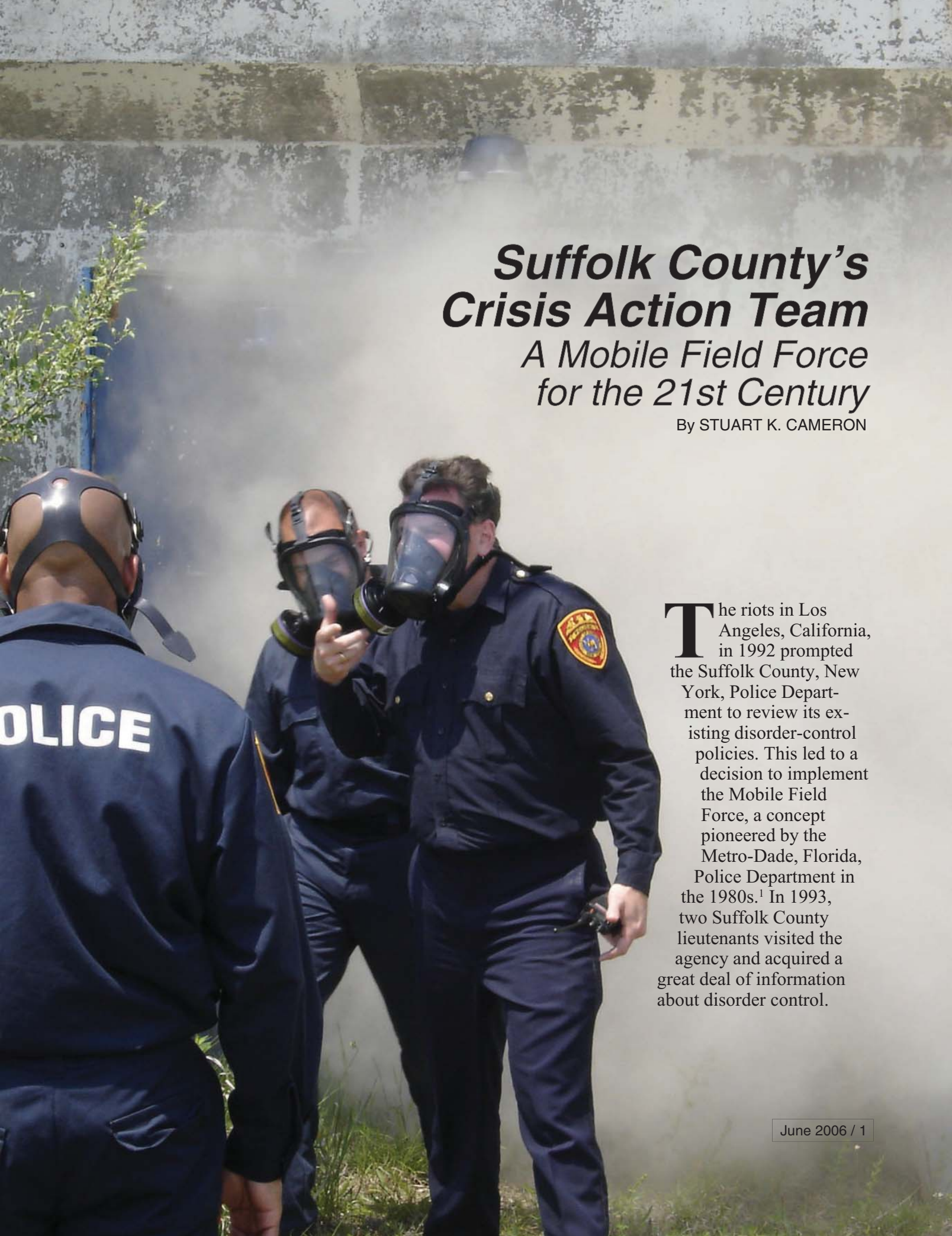
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Visionary Leadership

A photograph of three police officers in riot gear. The officer on the left is seen from the back, wearing a dark blue uniform with 'POLICE' in white letters. The two officers in the center and right are facing forward, wearing helmets with visors and carrying gas masks. They are standing in front of a light-colored, textured wall with some smoke or mist in the air. The officer on the right is holding a gas mask in his hand.

# ***Suffolk County's Crisis Action Team***

## ***A Mobile Field Force for the 21st Century***

By STUART K. CAMERON

**T**he riots in Los Angeles, California, in 1992 prompted the Suffolk County, New York, Police Department to review its existing disorder-control policies. This led to a decision to implement the Mobile Field Force, a concept pioneered by the Metro-Dade, Florida, Police Department in the 1980s.<sup>1</sup> In 1993, two Suffolk County lieutenants visited the agency and acquired a great deal of information about disorder control.

The system centers on rapidly mobilizing personnel from disparate commands into a unified, organized, highly effective disorder-control unit. Commanded by a lieutenant, the field force has six to eight individual squads, each comprised of a sergeant and seven officers, that respond as a highly disciplined and cohesive disorder-control force. The Suffolk County Police Academy informed recruits about the concept during their initial training and offered courses for newly promoted sergeants at its supervision school. Additionally, the department provided in-service classes for volunteers, both officers and sergeants, interested in becoming field-force trained. The department also acquired the necessary equipment for the newly formed Mobile Field Force, as well

as a van for storage and transportation.

Fortunately, Suffolk County, similar to most American communities, did not experience a lot of civil unrest and the field force was not needed for that purpose. Instead, the department adapted the mobilization and leadership concepts for various large, personnel-intensive events wherein officers from many commands worked together, such as sniper patrols, forest fires, an airliner crash, and the mutual-aid response to New York City after the tragic events of September 11, 2001. The initial training proved adequate, but, as time passed and the Los Angeles riots faded into history, officers and supervisors received little additional training and few exercises were conducted. While the field-force concept was sound, the

continued implementation dwindled, primarily due to the lack of an ongoing training program and poor equipment quality.

After September 11, the New York City Police Department invited officers from the Suffolk County Police Department and representatives from surrounding agencies to participate in the New York Metropolitan Counterterrorism Incident Response Committee. One of the first assignments given to all of the agencies was to conduct an after-action review of their mutual-aid response to New York City and to supply the results to the committee. Among the many positive elements that came out of this process was the formation of the Field Force Review Committee to examine the status of Suffolk County's Mobile Field Force. The committee looked at the concept both within the department, the primary law enforcement agency for five of the western townships with several independent town and village departments serving subsets of citizens, and throughout the entire county, comprised of a total of 10 townships located on the eastern end of Long Island with a population of close to 1.5 million.<sup>2</sup>

## THE REVIEW

When the committee began its review process, the



*Deputy Inspector Cameron commands the Special Patrol Bureau of the Suffolk County, New York, Police Department.*

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***As a force multiplier, CAT adds depth to the department because it provides an intermediate level of trained people.***

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department considered over 1,000 of its officers as field-force trained and equipped. The department believed that it would benefit from having such a large number of officers trained because it could mobilize a field force from on-duty personnel with minimal over-time costs. Despite these perceived advantages, the department faced a major dilemma. Could it successfully train and sufficiently equip over 1,000 officers for their newly expanded roles involving both the traditional civil unrest control responsibility coupled with the new homeland security onus?

As the review process progressed, the realization that the September 11 attacks had forever altered police work was beginning to sink in. Reacting to the times, law enforcement personnel intensified their commitment to prepare for a potential response to attacks against America involving weapons of mass destruction (WMD). Civil unrest could be coupled easily with or caused by an attack of this nature. Was the department's training and equipment up to the task?<sup>3</sup>

## THE CONCEPT

After much debate, the department opted for a smaller, well-equipped, and highly trained force. As a period of transition would occur, the department felt that it should

differentiate between the new force and the old Mobile Field Force. Hence, the Crisis Action Team (CAT) was born. The department decided to purchase up-to-date, reliable equipment and to conduct the best training possible, coupled with frequent refresher training and exercises. After all, how could it expect a group to remain unified and well-disciplined without continual training? CAT personnel would receive training in conventional field-force techniques combined with WMD.

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***Training for all CAT personnel in awareness-level courses will be ongoing and include several on homeland security issues.***

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The CAT concept fills a void between sector patrol officers and specialized sworn personnel in the department's Emergency Service Section. Consisting of about 40 people, this section includes the department's SWAT, hazardous materials response, and technical rescue units, along with its bomb squad. While this requires a great deal of training initially,

it proves beneficial when it comes to providing homeland security. Whereas some police departments may have needed to increase cooperation between their bomb squads and hazardous materials units to prepare for the threat of a dirty bomb, Suffolk County had these capabilities combined in one unit. Multifaceted threats became a little less challenging because officers were multidisciplined and crosstrained.

The CAT concept allows these specialists to concentrate their efforts on jobs that require the advanced level of training that they possess. As a force multiplier, CAT adds depth to the department because it provides an intermediate level of trained people. Specialists can be quickly depleted, especially when required to work at a task below their level of training. As in the previous Mobile Field Force, street officers pulled from the seven precincts and marine and highway patrol bureaus would comprise CAT. The department specifically did not include highly specialized personnel from its Special Patrol Bureau to keep them at the jobs requiring their advanced skills and abilities. But, having command staff from these specialized areas involved in the setup and oversight of CAT proves invaluable because they fully grasp the limitations of this concept and its

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associated training. These individuals can keep CAT from exceeding its appropriate roles and responsibilities. CAT is not a SWAT team, a bomb squad, or a hazardous materials response unit, but, rather, a group that allows personnel from these entities to work more effectively and efficiently.

### Personnel

The department decided that CAT personnel would receive refresher training in conventional Mobile Field Force concepts to bring everyone up to the same competence level, regardless of when the academy had initially trained them. It instructed precincts to select their best personnel for assignment to CAT. The Field Force Review Committee recommended that training and equipment be given only to enough people to staff three complete field forces, about 56 people for each. The department attempted to equally divide these individuals among the precincts and squads to ensure the best possible availability of personnel at all times. During the initial 2-day training courses, students learned about the field force's newly expanded role and that it would be a strictly volunteer duty. Having a wholly volunteer force comprised of interested and motivated personnel constitutes a huge asset.

### Equipment

New equipment purchases began, including air purifying respirators (APRs), basic duty uniforms, high-quality boots, and protective helmets with face shields capable of closing over the new APRs. The department replaced all of the metal insignia with embroidered patches as an added safety precaution. CAT supervisors decided to augment riot shields with blunt-force body armor, both for added protection and its imposing appearance. The focus shifted more toward officer safety than ever before.

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***All participating agencies act as equal partners, providing whatever assets they can spare and sharing command and control responsibilities.***

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A new trailer replaced the old field-force van. CAT supervisors felt that a trailer would require far less maintenance than a vehicle and be more reliable, even after long idle periods. Extensively customized, the trailer contains a generator,

a heating and air conditioning unit, shelving, and a work station to enable its use as a remote command post.

### Training

Because CAT would have an expanded role as a homeland security prevention and response team, much additional training would prove necessary. All supervisors of the rank of lieutenant or higher attended a course for hazardous materials technicians and numerous other antiterrorism and WMD classes. Some supervisors also completed instructor development training to acquire the proper certification to instruct fellow CAT personnel.

As an additional margin of safety, two officers from each of the three squads became COBRA officers, a concept based upon these officers obtaining advanced training so that they can serve as safety officers and advisors for their respective squads.<sup>4</sup> Like the supervisors, the COBRA officers also instruct their fellow CAT members. Having CAT personnel serve as instructors offers a twofold benefit:

1) other team members have greater confidence in these officers' skills, knowledge, and abilities during field deployments and 2) serving as instructors reinforces the material learned and keeps these personnel current. Moreover, it makes

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the team independent and self-reliant, thereby not depleting assets from other specialized commands during CAT training. Also, the team can schedule and implement its own training at the most beneficial times because it does not depend on the availability of outside instructors.

Once most of the supervisors and COBRA officers received their training, it came time to prepare the rest of the personnel. This included a variety of courses, such as basic instruction in the use and limitations of the APR mask under field conditions, a 1-hour block on improvised explosive devices, the opportunity to drive the emergency vehicle operations circuit while wearing an APR, and individual training for a few selected personnel on the gas grenade launcher.

The idea of training officers to operate a vehicle while wearing an APR came from participating in several homeland security exercises. One involved using a bus to move officers from the staging area to the drill site after they had donned their masks. While this proved adequate for the exercise, the department did not want officers to hesitate to drive while wearing a mask if it became necessary during an actual incident.

Training for all CAT personnel in awareness-level courses will be ongoing and

include several on homeland security issues. Those designated as shotgun officers attended a specific 1-day tactical shotgun course. It included firing the weapon while wearing an APR, which was an eye opener for many officers unfamiliar with the process. Most found it very challenging just to sight and aim the firearm with the mask in place. They soon realized why the department chose an APR that offered three filter attachment points when they had to relocate the filter to the other side of the mask to properly sight their weapons.

CAT training is open to allied law enforcement agencies because of the benefits inherent in sharing training with others, both on an individual and an agency basis. Individually, officers from other departments

generally leave better prepared to deal with crisis situations they may personally encounter. On an agencywide basis, officers return home with an idea of what Suffolk County is doing, which proves useful in preparing their own organizations to deal with crisis situations and also in coordinating efforts whenever work is performed together. The team also benefits from this interagency cooperation by culling innovative ideas from other agencies. The department has found that the more exposure it has to what others are doing, the better it can gauge and adapt the effectiveness of what it is doing. Quite often, the adage of not reinventing the wheel works well. Simply seeking out and borrowing someone else's best practices, much as the

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department did with the Mobile Field Force, proves extremely helpful.

### Enhancements

Training and equipment enhancements continue. CAT always will be a work in progress, as it should be. When it comes to responding to a WMD incident, an agency never can be *fully* prepared, but it can be *better* prepared. Through a liaison with the department's intelligence component, CAT remains informed of recent trends in civil unrest and homeland security issues, which it can use to adapt training and equipment to best prepare and protect its personnel.

The team has deployed a few times but, consistent with the prior use of the Mobile Field Force, not always at the standard complement of 56 officers. Therefore, the department developed the concept of a mini-CAT, one or more squads of officers utilized for specialized assignments because of their advanced training. These were employed at the 2004 U.S. Golf Open in Southampton, during the Republican National Convention, and when the President visited Suffolk County.

### A BROADER USE

Once the Field Force Review Committee examined the department's use of the Mobile

Field Force, it turned its attention to the other agencies in the county. The review committee recognized that during most large scale incidents, a certain amount of self-dispatch and self-response occurs among first responders, which can cause confusion and, at times, hamper operations. Realizing this and the fact that the only official mutual-aid request from New York City to Suffolk County after September 11 had come to the Suffolk County Police Department, the committee thought that a more coordinated response should be developed.

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***CAT is both proactive and reactive as it serves to prevent, detect, deter, and mitigate the myriad of threats facing Suffolk County in the 21st century.***

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An assortment of law enforcement organizations within Suffolk County agreed to form the Suffolk Coordinated Law Enforcement Response Group (SCLERG), which facilitates all law enforcement agencies within the county to respond as one unified assemblage.

The format used to bring these diversified personnel together was the tried and tested Mobile Field Force. Most officers had attended the Suffolk County Academy where many received instruction in field-force mobilization procedures and became familiar with the command and control aspects. SCLERG responds both internally to handle issues within the county and also externally as a mutual-aid resource. It serves as a way to mobilize a large number of patrol personnel for a general law enforcement assignment and is not intended specifically for civil unrest control. All participating agencies act as equal partners, providing whatever assets they can spare and sharing command and control responsibilities.

SCLERG has held several drills, starting with simply mobilizing personnel and progressing to a mock mutual-aid response outside the county. At present, 29 federal, state, county, town, and village organizations participate in SCLERG. Several departments have successfully commanded the overall force during previous drills, and personnel from a variety of agencies have smoothly integrated into the group. These drills and exercises have served to reintroduce and reinforce the adapted field-force concept and have assisted in overcoming numerous issues,



not the least of which was interoperable communications. The SCLERG concept also has transcended the drills and improved the everyday coordination and cooperation between these agencies.

SCLERG has benefitted both the Suffolk County Police Department and all of the allied agencies. The department now can share the burden of a protracted deployment, both for personnel and equipment, and can access specialized equipment, such as refueling trucks and large buses owned by the sheriff's department, that it does not possess. All of the allied agencies have the ability to officially participate in an effective way during a large mobilization. The effort has eliminated self-response from within the law enforcement ranks of Suffolk County. Any external agency requesting mutual aid from Suffolk County law enforcement organizations now will obtain help from one unified force with interoperable communications and preestablished command and control. Suffolk County law enforcement personnel will arrive prepared to effectively go to work immediately.

## CONCLUSION

The Crisis Action Team has made the Suffolk County Police Department better prepared for both civil unrest situations and

homeland security responsibilities. Employing an all-hazards approach, the team offers great utility and flexibility for responding to both man-made and naturally occurring events. The concept of training patrol officers to a higher level has an added benefit. These officers, spread throughout the precincts, provide additional protection on a daily basis while they go about their normal duties.

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Undoubtedly, they also will share some of their acquired knowledge with their coworkers. The CAT concept has given the department a reliable, flexible, and effective method to mobilize trained personnel in a timely fashion.

CAT is both proactive and reactive as it serves to prevent, detect, deter, and mitigate the myriad of threats facing Suffolk County in the 21st century.

Moreover, when used in conjunction with specialized emergency service personnel and the Suffolk Coordinated Law Enforcement Response Group, it offers an excellent overall response matrix. In short, specialized emergency service officers can focus on the epicenter, CAT personnel can secure the perimeter, and SCLERG participants can handle all other necessary law enforcement duties. ♦

## Endnotes

<sup>1</sup> Charles Rappleye, "Fear Itself Keeping Democracy Safe from the Streets," *LA Weekly*, August 17, 2000.

<sup>2</sup> A combination of the New York State Police and several town and village departments serve the five eastern townships. With the exception of New York State Police personnel, the Suffolk County Police Academy trained most of these officers.

<sup>3</sup> One of the first things the department did was examine all of the field-force respirators. When it issued these, the worst potential result of a mask failure would have involved officers receiving a face full of riot control agent and the necessity to back off the skirmish line. Suddenly, no acceptable failure rate existed because inadequate protection in a toxic WMD environment could have far graver consequences. Qualified personnel examined these masks and found that some had expired filters and others were torn or dry-rotted. This was not the equipment that the department wanted for its personnel. It recalled all of the masks and sought reliable, high-quality replacements.

<sup>4</sup> COBRA refers to chemical, ordnance, biological, and radiological issues and signifies that these individuals have received enhanced WMD training to act as safety officers and technical advisors.



## Youth Alcohol Enforcement A Community Project

By Jim C. Arnott



**C**ommunities across the United States continue to see the epidemic of underage drinking grow. Various factors, such as peer pressure and a national media that emphasizes the allure of alcohol and downplays its negative effects, help explain why it has become so widespread.

In Missouri, we have a teenage drinking problem that mirrors the national trend. Statistics reported that 87 percent of high school students have experimented with alcohol.<sup>1</sup> In fact, 56 percent of young people will have tried it by the 8th grade<sup>2</sup>—this figure becomes even more alarming when considering that individuals who have their first drink at age 13 have a 47.3 percent chance of becoming alcohol dependent during their lives.<sup>3</sup> And, binge drinking is not just a significant problem among college students—one report indicated that 11 percent of 8th graders, 22.5 percent of 10th graders, and 30.2 percent of 12th graders have engaged in this behavior in the past 30 days.<sup>4</sup>

Representing over 20 percent of all alcohol-dependent people,<sup>5</sup> underage drinkers do not consider the consequences. Abuse of this drug has devastating effects. For instance, it can contribute to depression and suicidal behavior among teens, hamper their ability to earn a high school diploma, or, perhaps, lead to an early death.

Such an alarming situation presents a challenge and demands an urgent response from the law enforcement community. In addressing the problem in Greene County, Missouri, we initiated an innovative project—Youth Alcohol Enforcement.

### OUR RESPONSE

#### Background

In 2002, I continued to observe a disturbing trend of alcohol overdoses among our young people and underage drinking parties in rural areas of the county. As with other law enforcement agencies, we responded with traditional tactics. Deputies would arrive at the location and make a grand entrance. Teens would scatter, often leaving their vehicles and friends behind. Officers then would attempt to locate the host of the party or who they determined to be an adult. Deputies would issue a stern warning that if they had to return to the residence, someone, if not everyone, would go to jail. The officers then would make the individuals pour out any remaining alcohol. Making a criminal case based on possession proved difficult.<sup>6</sup> And, because of their inability to follow up due to varied shifts and calls for service, deputies could not see the results of any juvenile referrals they had made.

I reviewed the majority of the reports we generated and determined which ones I should assign to an investigator for further action. Many pertained to responses to large disturbances and assaults involving youths and alcohol. Some referred to deputies handling medical calls in which a minor overdosed. I was sending detectives out regularly to follow up on these cases and refer them to juvenile authorities for action plans.

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In analyzing the problem, I spoke with uniformed deputies and had them determine how minors obtained alcohol. The most common methods included having an older friend buy it, purchasing from various liquor retailers in the county, soliciting adults to make the purchase, and, in other cases, receiving it from parents hosting underage drinking parties.

In June 2002, we formed a relationship with Community Partnership of the Ozarks and a small group of teenage students committed to curbing alcohol and cigarette consumption by minors. Detectives began by attending a pizza party with these youths and then interviewing them. We decided to attempt a series of liquor store compliance checks. Community Partnership of the Ozarks obtained a small grant to pay off-duty detectives to assist in this process. I obtained a list of every retailer in Greene County and sectioned them into four zones, assigning a team of two detectives to each one. We made green and red flyers for distribution during this process. Establishments that passed the compliance test by not selling to one of the volunteers received a green one, which stated that, as a reward, a public service announcement recognizing their compliance with the law would run in the local newspaper. Stores that sold to one of the youths received a red flyer advising them of the potential consequences and that they were on notice for selling to a minor.

### **The Program**

In August 2002, we started our program, Youth Alcohol Enforcement. A grant awarded to the Greene County Sheriff's Department, Springfield Police Department, Greene County Prosecuting Attorney's Office, and Community Partnership of the Ozarks paid for overtime money for detectives

to participate. Also, the Greene County prosecuting attorney provided a letter of immunity for volunteers involved in the investigations. This program has proven effective in our fight against underage drinking throughout the county and features several components.

#### *Proactive Enforcement*

In one phase of the program, we conduct proactive enforcement on retail stores, as well as clerks, that sell alcohol to minors. Detectives, using a divided list of establishments in Greene County, accompany groups of young volunteers. They

watch the teens enter stores to attempt a purchase. If a sale occurs, the volunteer brings the alcohol to a detective who secures it as evidence. Then, the other officer issues a summons to the clerk. Not only does a criminal case result but the store incurs a violation of its liquor license.

#### *Compliance Checks*

Another effort involves bar and restaurant compliance checks. In these instances, detectives enter establishments that serve alcohol and watch customers approach waitresses and bartenders to attempt a purchase. Then, in suspicious situations, officers confront buyers and check identification. If minors were served, the detectives issue a summons and seize the alcohol. Also, we submit a report to licensing authorities.

#### *Badges in Business*

Another operation places our detectives in stores where they watch clerks identify customers and ensure they sell only to adults. When offenders present fake identification or a minor attempts to make a purchase, detectives identify themselves, collect the appropriate evidence, and either issue a summons or make an arrest. This program benefits

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**Our officers have seen measurable results in their battle against the dangerous epidemic of teenage drinking.**

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both the law enforcement agency and the retail establishment as both gain additional familiarity with each other's roles in preventing juveniles from obtaining alcohol.

### *Patrol Efforts*

Detectives also patrol frequent party locations in the county to look for gatherings of underage drinkers. Using unmarked cars, they can avoid discovery until it is too late for the offenders. While conducting these types of patrols, our officers have discovered that once they identify themselves, the youths scatter. Detectives surround the party and uniformed deputies occupy the road area. We have found that the most difficult part of these operations is to catch minors with the alcohol in their hands.<sup>7</sup> Detectives make more cases by interviewing each attendee and obtaining written statements. Generally, youths are truthful; most have not had frequent contact with law enforcement and usually cooperate. After the interviews, detectives have *suspects point out the container of alcohol that they possessed or drank from*. Then, the officers seize the container, obtain a sample, and submit it to the crime laboratory for testing. We then ask suspects to complete a voluntary written statement; most provide a detailed one.

### *Stings and Stakeouts*

In our youth-contact stings, detectives sit in undercover vehicles while waiting for minors to approach them. Some do and, after a short conversation, will ask the officers to purchase alcohol for them. Then, the detectives identify themselves and issue the suspect a summons.

Detectives also stake out retail liquor stores to watch for illegal customer activity. We routinely observe cars with multiple youths inside pulling into these parking lots. Through binoculars, our

officers watch money change hands before only one of the passengers enters the store, thereby arousing suspicion that no one else in the car is of legal age. Then, after watching the individual leave the establishment, give change, and, perhaps, distribute the alcohol, we feel that reasonable suspicion exists and that a vehicle stop and further investigation are justified.

After making the stop, detectives separate the parties and interview them. Usually, we have found that the car consisted of young people who paid the sole adult passenger to buy for them. We send these cases to a special prosecutor who works with us. The adult buyer is not offered a plea and receives the full fine and costs, along with a conviction. On their first offense, the juveniles are mandated to attend a diversion program on alcohol abuse. For second offenses, they also receive the maximum fine and punishment. These deterrents help ensure the success of the program.

## **OUR RESULTS**

We have found that our efforts through Youth Alcohol Enforcement have proven a resounding success. Our officers have seen measurable results in their battle against the dangerous epidemic of teenage drinking. For example, in a recent 1-year period, we worked 1,022 hours of overtime. During this time, we issued 153 citations or arrests for minors in possession of alcohol, 163 for supplying intoxicants to minors, 104 for driving while intoxicated, and 335 for other criminal violations. We consistently have seen similar results.

In one tragic case, we responded to a home in rural Greene County in reference to a deceased male juvenile. Upon investigation, we determined that he had overdosed on alcohol and died after a party at the home. Detectives tracked down the adults and minors responsible for supplying the

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**The success of this project has depended on not only our dedicated officers but the community...**

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alcohol to him. We discovered that the adult female resident had allowed several drinking parties in the past. This case gained significant media attention for some time and highlighted our mission to prevent such needless deaths. As a result, we obtained more support to continue our efforts, along with assurance for a grant renewal when our funding became low.

## CONCLUSION

Alcohol abuse among young people continues to be a serious nationwide epidemic. In response, our department continues to see the need for effective proactive police work in the community.

I believe that Youth Alcohol Enforcement has proven successful. The statistics speak for themselves. And, we have seen a reduction in the number of liquor stores that sell to minors. The success of this project has depended on not only

our dedicated officers but the community, including the retail business owners who have taken an active role in the prevention of sales to minors. ♦

## Endnotes

<sup>1</sup> National Alcohol Beverage Control Association, *Best Practices for Underage Drinking Prevention* (Alexandria, VA, 1997).

<sup>2</sup> Community Partnership of the Ozarks, *Underage Drinking in Missouri* (Springfield, MO, 2002).

<sup>3</sup> Center for Science in the Public Interest, *Youth and Alcohol* (Washington, DC, 1999).

<sup>4</sup> Supra note 2.

<sup>5</sup> Supra note 3.

<sup>6</sup> Until August 2005, authorities in the state of Missouri had to build cases on physical possession; consumption alone was insufficient.

<sup>7</sup> States differ in their recognition of possession by consumption.

*Chief Deputy Arnott serves with the Greene County, Missouri, Sheriff's Department.*

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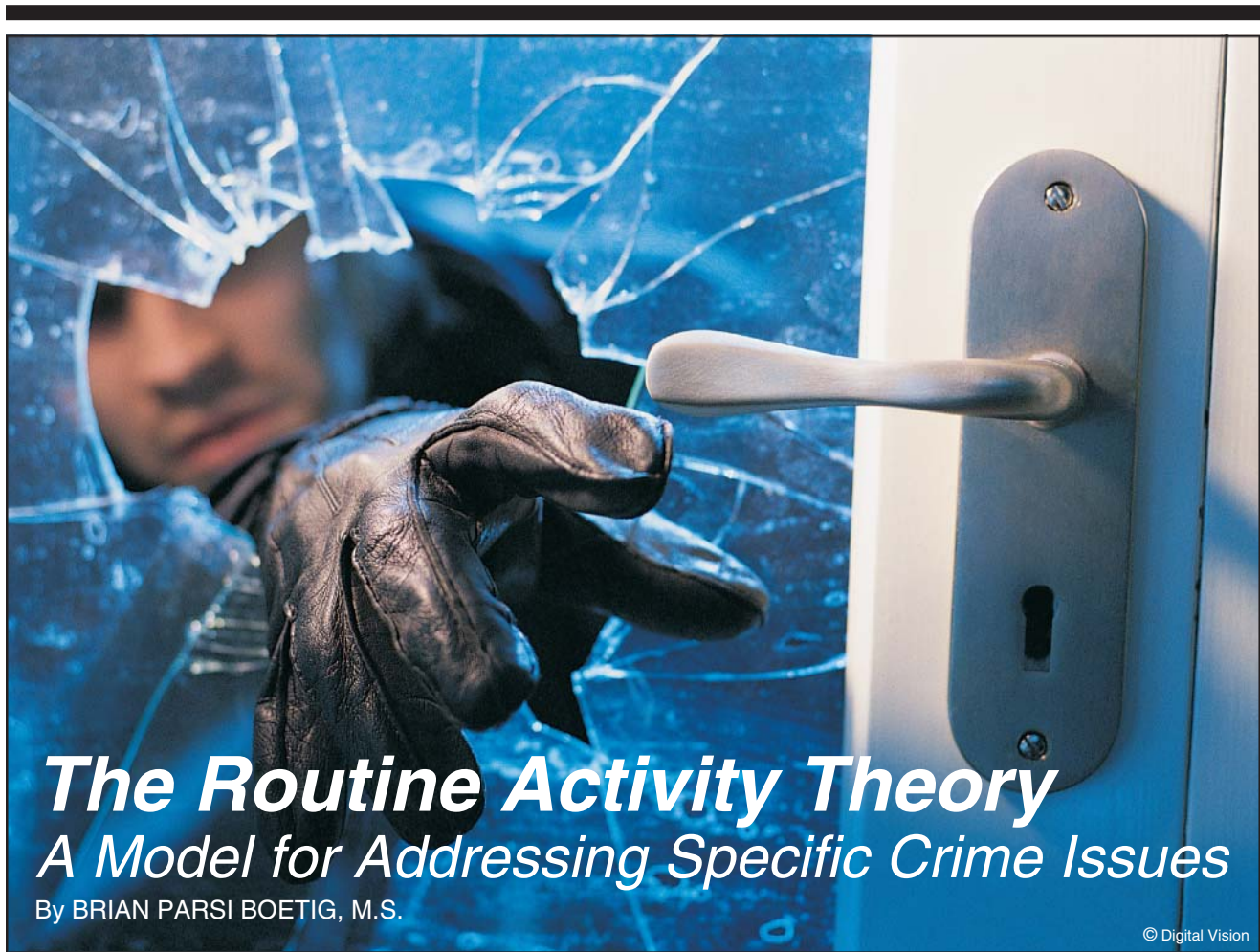
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**D**eveloped over 50 years ago, the routine activity theory has remained at the forefront of crime analysis and prevention efforts. The model addressed crime analysis from a different perspective than most theories preceding it by exploring the convergence of the crucial components of crime at specific locations in space and time without regard to the motivation of the deviant act. Despite receiving criticism for the routine activity theory's simplistic approach,<sup>1</sup> many researchers applied it to various

criminological studies from stalking to narcotics trafficking. Understanding the theory can assist law enforcement administrators in comprehending existing research and aid in developing crime control models to address specific crime issues.

### **Historical Framework**

In 1979, Lawrence Cohen and Marcus Felson provided a new perspective on the criminological outlook on crime.<sup>2</sup> While most extant theories at that time focused primarily on criminals and their motivations

and environment, the routine activity theory simplified concepts generally taken for granted by criminologists; it took the focus away from the criminal and redirected it toward the criminal act. Cohen and Felson readily admitted that although the routine activity theory was not a new idea, existing academic criminal research frequently overlooked it.<sup>3</sup>

During the decades preceding the routine activity theory, the pendulum of research began to focus on criminal acts, rather than broad social causes of

crime. A new breed of classical thinkers sought “workable solutions to the problem of crime” to replace the scientific and theoretical perspectives of offenses in the 1970s.<sup>4</sup> Studies published during those years explored residents’ actions aimed at the reduction of access to offenders, distance of homes from the central city, and the presence of criminals who accounted for property layout and human activity around homes.

The routine activity theory sought to fulfill shortcomings in existing models that failed to adequately address crime rate trends since the end of World War II. The U.S. Census Bureau (Bureau) reported on social and economic trends in metropolitan areas prior to and after the war. Criminologists focused on the same social and environmental issues measured by the Bureau and correlated them to crime rates. When criminological theories were applied to the Bureau’s data in 1960, they would have indicated a reduction in crime as social and economic conditions improved, but the crime rate data actually showed increases in crime according to the FBI’s Uniform Crime Reports. Without focusing on crimes, existing deterministic research, which took into account all social and economic factors, failed to explain this deviance between

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***The routine activity theory explains how changes in daily patterns or activities of social interaction... affect differences in crime rates.***  
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*Special Agent Boetig is a supervisor in the FBI's San Francisco Division.*

the criminological theory and the Bureau’s data. Felson, along with other researchers at this time, addressed the issue through crime-specific analysis,<sup>5</sup> which encompassed the social disorganization occurring in metropolitan areas (e.g., the increase of married females in the workforce, unattended homes during workdays and vacations, and collegiate attendance among other new or changed social patterns). These social changes were examined and associated with crime rates, rather than the effects on criminals.

### **Components**

The routine activity theory explains how changes in daily patterns or activities of social interaction, such as employment, recreation, educational endeavors, and leisure activities, affect differences in crime rates. It examines crimes as

events, occurring at “specific locations in space and time, involving specific persons and/or objects.”<sup>6</sup> Three crucial components necessary for predatory crimes are motivated offenders, suitable targets, and the absence of capable guardians.<sup>7</sup> The lack of any one of these would prevent a predatory crime. As communities evolve, routine activities of the citizens also change. These societal adjustments cause the convergence of the three primary components to either increase or decrease in certain spaces and at particular times; therefore, changes in the crime rates occur independent of societal or behavioral conditions that motivate offenders.<sup>8</sup>

The analysis identifies predatory crime (the focus of the routine activity theory) as an illegal act consisting of direct physical contact between an offender and a victim (e.g., rape, robbery, residential



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burglary, and theft). It also classifies damaging or stealing an object also as predatory. The definition inherently excludes such nonpredatory crimes as possession of illegal contraband or public intoxication.

The motivated offender must have the willingness and ability to commit predatory crimes. Although previous criminological research heavily relied on motive, the routine activity theory only analyzes the presence and actions of an offender. While people conduct routine activities, motivated offenders select their targets based upon the perceived value, visibility, accessibility, and inertia of the objective. For example, expensive and moveable items, such as automobiles and portable laptop computers, have a higher risk of theft than washing machines and desktop computers because of the suitability of stealing them.

Offenders or victims can use technological and organizational advances of society to increase their abilities to carry out predatory crimes or defend against them. Offenders may use weapons in the commission of an offense, but victims also may use them as a deterrent. Automobiles, highways, and telephones also provide additional opportunities for offenders to thrive and victims to react. The ability of people to take evasive actions or possess

protective tools, such as a weapon, also can reduce their potential for victimization.

When a motivated offender identifies a suitable target, the presence or absence of a capable guardian becomes a determining factor in the actual commission or deterrence of a criminal event. While law enforcement officers and security guards represent obvious protectors, research has neglected the notion of the unwitting citizen assuming an important

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***The model has steadily continued to attract attention and support in many criminological areas....***

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role in guardianship with no bias toward the presence or absence of illegal acts. For example, a person at home during the workday may provide a form of guardianship over a neighbor's unoccupied house. A motivated offender may choose not to burglarize a home despite the presence of a suitable target (e.g., visible cash inside the house) because he fears the neighbor might cause his capture.<sup>9</sup> Further, capable guardians

are not always people. Burglar alarms, video cameras, and other threats of exposure or capture can function as guardians, although their capabilities vary.

The theory also examines the extent of capable guardianship in groups of people and at certain locations as lone individuals usually are more likely to be victimized.<sup>10</sup> This additional guardianship occurs even if the group was assembled as a routine activity (e.g., a social function) with no intention of serving as a protective force, or guardian, for the group.

### **Modifications**

A fourth component, the existence or absence of a handler, modified the routine activity theory.<sup>11</sup> This reworking attempted to build upon the earlier model where the presence of motivated offenders simply was assumed. The handler component involves a two-step process. First, social bonds are developed in society. Second, someone with a relationship to the potential offender exercises control over that person to adhere to the social bonds. The term *motivated offender* became *likely offender*.<sup>12</sup> This subtle change reflected the rational choice concept within the framework of the routine activity theory. Where the application fell short of an explanation on why

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criminals become motivated, the rational choice concept filled this void.<sup>13</sup>

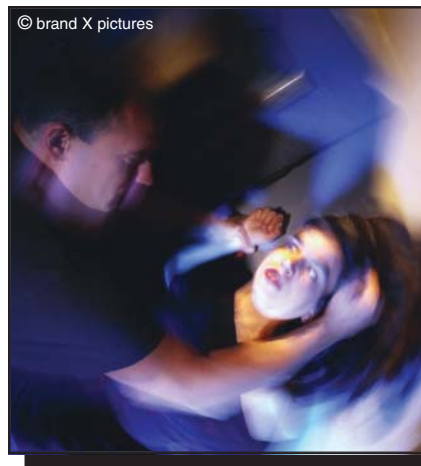
### **Contemporary Usage and Popularity**

While some have criticized the routine activity theory,<sup>14</sup> others have relied upon it to address a multitude of crime-related topics. Scholars, researchers, and practitioners throughout the world use the theory as an approach to the study of crime and to provide foundations for crime prevention and forecasting. The model has steadily continued to attract attention and support in many criminological areas,<sup>15</sup> including predatory crimes as outlined in the original theory and others not included in the original model's design.

In a series of books geared toward criminal justice students and researchers, as well as loss prevention practitioners and other interested parties, Felson applied the routine activity theory to explain and prevent crime.<sup>16</sup> In addition to predatory offenses, he expanded the theory's usage to address fights, illegal markets, and white-collar crime and presented suggestions for a technique known as situational crime prevention, the analysis of unique characteristics associated with crime problems to arrive at prevention solutions.<sup>17</sup> Combining the routine activity theory with

situational crime prevention was used later to explore crime within the business environment and in local communities.<sup>18</sup>

Within the study of victimology, the routine activity theory has been applied quite often. The example of a burglar entering an occupied home with the intent to steal but, instead, finds a woman to rape is a "malicious serendipity" of the routine activity theory.<sup>19</sup> Researchers used the theory to counter the "rape supportive culture" belief and show that not all women have the same risk of sexual assault based on their repetitious activities.



Victimization is characterized as less random and more spatial and temporal as outlined by the routine activity theory.<sup>20</sup> Researchers have used college campus safety as the setting for applying the routine activity theory, mainly for victimization

studies. Applying the model to the rates of criminal victimization on campuses, they concluded that residents provide a continuous supply of suitable targets, especially with their abundance of portable goods.<sup>21</sup> College students generally lack suitable guardians and engage in risky lifestyles, such as partying and consuming alcohol and other drugs.<sup>22</sup> One study expanded the topical area of guardianship to explore those who make efforts to decrease their individual-level protective behaviors and why they do so.<sup>23</sup> The research sampled a college campus population and found that a general fear of crime was not a significant influencing factor, but, rather, specific, objective knowledge of both the potential exposure to likely offenders and the characteristics of the surrounding area caused changes in the routines of probable victims.<sup>24</sup> For example, a university police department should advise students of specific problem areas (In the past 3 months, two attempted sexual assaults have occurred at the parking deck near the library after dark.) instead of generalizing that threat across the entire campus (Two attempted sexual assaults have taken place on campus in the past 3 months.). Although the threat of sexual assault does exist across campus, the general fear is not as productive as specific

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information in influencing students' behaviors.

Researchers also have applied the routine activity theory to stalking.<sup>25</sup> While the topical areas run concurrent with several others, such as college crime<sup>26</sup> and victimization,<sup>27</sup> studies have used the application to model stalking incidents, vulnerabilities, and its likelihood.<sup>28</sup> Similar to other types of victimization, the prevalence of stalking on college campuses often relates to the stable presence of suitable targets and the lack of capable guardians. Researchers applied the routine activity theory to determine that college women become suitable targets based on their routine and daily activities. The research sought to identify the lifestyle habits of stalking victims to give some predictive value to the likelihood of becoming a stalking victim.<sup>29</sup>

Researchers also applied the theory to the analysis of international drug control policy in the Netherlands, an application far from any use considered in the original theory development. They contended that in an attempt to develop drug control policies, the Dutch have become too far-reaching in their policy development and reviewing and reformulating policy based on the more simplistic routine activity theory could prove useful.<sup>30</sup> A similar argument also was presented several

years after the research regarding the Netherlands applying the routine activity theory to explain the country's narcotic problem.<sup>31</sup>

An attempt to understand conflict that occurs in everyday life drew upon the fundamental elements of the routine activity theory. Researchers formed a parallel between conflict and routine activity and expressed the importance of the analysis, citing that the integration of the two elements can "interact in a criminal case."<sup>32</sup>

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***Researchers also have applied the routine activity theory to stalking.***

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The routine activity theory was reformulated by marrying it with the theoretical concepts of several other criminological theories, including situational crime prevention, the control theory, self-control, and social disorganization. The reformulated theory was principally designed to describe the use of civil remedies to prevent crime,<sup>33</sup> and, though lacking empirical support, it proved useful for initially analyzing the effect of civil remedies.<sup>34</sup>

## **Practical Value for Crime Control**

Law enforcement agencies can address specific crime issues within their respective jurisdictions by applying the routine activity theory as a framework for analyzing a problem and planning an intervention. Analyzing includes collecting and examining data about the problem, describing its history, evaluating potential causes, reviewing previous interventions, and identifying stakeholders and offenders.<sup>35</sup> The routine activity theory assists in all of these analytical processes. Once agencies analyze the problem and identify its causes, they efficiently and effectively can begin setting goals and objectives to achieve an outcome and design, implement, monitor, and evaluate programs or policies to address the problem, reducing the likelihood of the convergence of the three main components needed for a crime to occur.

## **Case Example**

A city experienced an increase in daytime residential burglaries in a particular district. An analysis of the problem by the city's police department explored the three components of the burglaries that, according to the routine activity theory, must exist. The arrest reports in the few solved cases indicated that the motivated offenders



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were primarily juveniles between the ages of 13 and 17. A review of the incident reports and follow-up interviews with the burglarized homeowners revealed that most burglaries happened on weekdays between noon and 5 p.m. During this time, all patrol units not responding to specific calls were required to be positioned in the city's school parking lots and at school crossings. No residences with alarm systems (or signs indicating the presence of one) were targeted. Often, several neighboring homes were burglarized on the same day. These crime characteristics represented the level of capable guardianship (or lack of it) during the criminal events. The suitable victims in this scenario were the actual items taken, not necessarily the owners of them (although most people generally think of owners as the victims). The items reported taken from the homes were normally small and easily transportable, including liquor, cash, CDs, and small electronic devices. Many of the homes' interiors often were needlessly vandalized as well.

After the department analyzed the routine activity theory's three components of the crime problem, it designed an intervention program. According to the model, the absence of any one of the components of a crime sufficed in preventing that crime.

Therefore, assessing each component of the crime assisted in developing different action plans to use individually or together to develop preventive measures. The motivated offenders in the burglaries appeared to be juveniles, rather than professional burglars, based on the arrests made in the recent past, the less valuable nature of the victims (items stolen), and the senseless vandalism perpetrated at the scene.



Also, the burglaries appeared to occur in a period coinciding with lunch and after-school periods. To reduce the convergence of these motivated offenders with suitable targets (items in the residences), the department could initiate strict truancy enforcement programs, work with the schools to better track students leaving campus during the lunch period, and develop after-school programs. If the handler component of

the theory is considered, law enforcement could work to implement programs to exercise influence over the juveniles to refrain from engaging in delinquent or illegal behavior, including initiatives to create mentorship or work programs for at-risk youths, parental notification of the burglary problem through community meetings, or even media releases.

In this example, the capable guardians included police officers, school officials, neighbors, and residential alarm systems, as well as residents simply being at home (which is not an option for many people who must leave their residences to go to work). Such efforts as creating a Neighborhood Watch with residents who remain home during the day, suggesting the installation of residential alarm systems, reminding residents to lock their doors, and increasing law enforcement patrols in the neighborhoods during peak burglary periods can increase the capable guardianship.

Reducing the suitability of the victims posed the most difficult task in this scenario because few citizens will purchase less valuable property just to decrease the likelihood of theft (many people do reduce the suitability of their cars being stolen by driving older, less attractive cars), and the government has little input in the legal

personal possessions of citizens. To reduce the suitability of the victims (items taken), police could provide information through pamphlets or community meetings to residents reminding them to secure valuables within their homes (not clearly visible from open windows) and not leave large sums of cash there. While ensuring that doors are locked acts as a capable guardian, it also hardens the target by making it more difficult to actually take.

While the scenario is simple and certainly not an exhaustive exploitation of each of the routine activity theory's components, it provides an example of how law enforcement can use the theory as a model for addressing specific crime issues. This scenario uses both the problem analysis and intervention program development stages.

## Conclusion

Many researchers have used the routine activity theory to address crime problems, explain them, and develop preventive measures and solutions. In existence for over 50 years with only one minor alteration, the theory, with its unique applicability to a variety of criminological topics, is a resourceful model for crime-related studies.

Based on the popularity in current research, the routine

activity theory will remain a tool for practitioners and a source of interest for researchers for several more decades. Law enforcement agencies can use it as a model to address a plethora of specific crime-related problems because of its simplicity and versatility.

***An attempt to explain conflict that occurs in everyday life drew upon the fundamental elements of the routine activity theory.***

Contemporary uses highlight the seemingly illimitable potential of the theory in addressing particular crime concerns. Law enforcement managers can optimize the benefits of existing research and use them to address issues in their own jurisdictions to make their citizens and communities even safer. ♦

## Endnotes

<sup>1</sup> C.R. Jeffery, "Obstacles to the Development of Research in Crime and Delinquency," *Journal of Research in Crime and Delinquency* 30 (1993): 491-497.

<sup>2</sup> See, L.E. Cohen and M. Felson, "Social Change and Crime Rate Trends:

A Routine Activity Approach," *American Sociological Review* 44 (1979): 588-608.

<sup>3</sup> Ibid., 591.

<sup>4</sup> S. Pfohl, *Images of Deviance and Social Control* (New York, NY: McGraw-Hill, 1994), 83.

<sup>5</sup> M. Felson, "The Routine Activity Approach and Situational Prevention," in *Contemporary Criminological Theory*, eds. L. Siegel and P. Cordella (Boston, MA: Northeastern University Press, 1997), 20.

<sup>6</sup> Supra note 2, 589.

<sup>7</sup> Predatory does not imply person-on-person crime but, rather, preying on either a person or an item. Therefore, a burglary constitutes a predatory crime because the offender preys on the vulnerability of the item. Some items are more vulnerable than others. For example, it is easier to steal a piece of candy than a washing machine.

<sup>8</sup> Supra note 2, 604.

<sup>9</sup> For illustrative purposes and to maintain clarity, the author employs masculine pronouns for subjects in most instances.

<sup>10</sup> Further exploration in this area of a group of people as increasing capable guardianship is suggested to modify this concept from the perspective of terrorist acts where larger groups of people may actually increase the chances of victimization.

<sup>11</sup> M. Felson, "Linking Criminal Choices, Routine Activities, Informal Control, and Criminal Outcomes," in *The Reasoning Criminal: Rational Choice Perspectives on Offending*, eds. D.B. Cornish and R.V. Clarke (New York, NY: Springer-Verlag, 1986), 119-128.

<sup>12</sup> M. Felson, *Crime and Everyday Life*, 2nd ed. (Thousand Oaks, CA: Pine Forge Press, 1998), 53.

<sup>13</sup> J.R. Brunet, "Discouragement of Crime Through Civil Remedies: An Application of a Reformulated Routine Activities Theory," *Western Criminology Review* 4 (2002): 71.

<sup>14</sup> Criticisms regarding the routine activity theory's general lack of value have been lodged; see supra note 1; J.L.

Massey, M.D. Krohn, and L.M. Bonati, "Property Crime and the Routine Activities of Individuals," *Journal of Research in Crime and Delinquency* 26 (1989): 378-400. More specific critiques of perceived research shortcomings and inadequate operationalizing of critical factors are found in T.D. Miethe, M.C. Stafford, and S.J. Long, "Social Differentiation in Criminal Victimization: A Test of Routine Activities/Lifestyles Theories," *American Sociological Review* 52 (1987): 184-194; and D.W. Osgood, J.K. Wilson, P.M. O'Malley, J.G. Bachman, and L.D. Johnston, "Routine Activities and Individual Deviant Behavior," *American Sociological Review* 61 (1996): 635-655.

<sup>15</sup> An Internet-based search of WebSPIRS (SilverPlatter Information: Florida State University (n.d.), retrieved March 10, 2004, from <http://80-www.lib.fsu.edu.proxy.lib.fsu.edu:9000/resources/criminology.html>) indicated that 33 criminal justice periodicals have published articles related to the routine activity theory since 1980, 26 of which have been in the last decade. A social science citation index through ISI Web of Knowledge (Thompson ISI. (n.d.). Social Science Citation Index, retrieved March 10, 2004, from <http://isi4.isiknowledge.com/portal.cgi/wos>) revealed 35 articles related to the routine activity theory and approach in their database since 1978.

<sup>16</sup> Supra note 12.

<sup>17</sup> Supra note 5, 20-25.

<sup>18</sup> M. Felson and R.V. Clarke, *Business and Crime Prevention* (Monsey, NY: Criminal Justice Press, 1997); and M. Felson and R.V. Clarke, *Opportunity Makes the Thief* (London: Police Research Group, 1998).

<sup>19</sup> Supra note 12.

<sup>20</sup> E.E. Mustaine and R. Tewksbury, "Sexual Assault of College Women: A Feminist Interpretation of a Routine Activities Analysis," *Criminal Justice Review* 27 (2002): 90.

<sup>21</sup> V.A. Henson and W.E. Stone, "Campus Crime: A Victimization Study,"

*Journal of Criminal Justice* 27 (1999): 295-307.

<sup>22</sup> B.S. Fisher, F.T. Cullen, and M.G. Turner, "Being Pursued: Stalking Victimization in a National Study of College Women," *Criminology and Public Policy* 1 (2002): 266.

<sup>23</sup> E.E. Mustaine and R. Tewksbury, "College Students' Lifestyles and Self-Protective Behaviors: Further Considerations of the Guardianship Concept in Routine Activity Theory," *Criminal Justice and Behavior* 30 (2003): 309.

<sup>24</sup> Ibid., 321.

<sup>25</sup> Supra note 22; and E.E. Mustaine and R. Tewksbury, "A Routine Activity Theory Explanation for Women's Stalking Victimization," *Violence Against Women* 5 (1999): 43-62.

<sup>26</sup> Supra notes 22 and 23.

<sup>27</sup> Supra note 25.

<sup>28</sup> Supra note 22.

<sup>29</sup> Supra note 25 (Mustaine and Tewksbury).

<sup>30</sup> G. Farrell, "Routine Activities and Drug Trafficking: The Case of the Netherlands," unpublished manuscript, Rutgers State University of New Jersey, 1997; retrieved January 21, 2004, from <http://www.drugtext.org/library/articles/98911.htm>.

<sup>31</sup> T. VanderHeijden, "Routine Activities and Drug Trafficking via the Netherlands," paper presented at the meeting of the Institute for Human Rights and Criminal Justice Studies, Durban, South Africa, 2001.

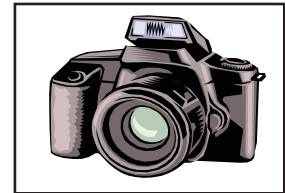
<sup>32</sup> W.A. Pridemore, "Review of When Push Comes to Shove: A Routine Conflict Approach to Violence," *Journal of Criminal Justice and Popular Behavior* 7 (2000): 125-128.

<sup>33</sup> Supra note 13, 73.

<sup>34</sup> Supra note 13, 76.

<sup>35</sup> W.N. Welsh and P.W. Harris, *Criminal Justice Policy and Planning* (Cincinnati, OH: Anderson, 1999).

## Wanted: Photographs



The *Bulletin* staff is always looking for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use color prints, digital photographs, or slides. It is our policy to credit photographers when their work appears in the magazine. Contributors should send duplicate, not original, prints as we do not accept responsibility for damaged or lost prints. Send photographs to:

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# Leadership Spotlight

## Visionary Leadership

*Where there is no vision, the people perish.*

—Proverbs 29:18

**W**hat is vision? Why is it so hard to develop a guiding vision? Why do we need one? Oversimplified, vision is the answer to, “What do we want to be?”

Vision statements in the law enforcement community are quite common and, in fact, play a vital role in setting the direction for agencies. These statements often are very helpful in orienting young women and men toward the selection of a career in policing. Most of us can remember with pride admiring the vision statements of the organization we joined. Those of us in the middle of our careers may use these guides to re-energize our commitment to the work to which we are dedicating our lives. Those finishing their public service can use them to reflect with satisfaction on the time and energy devoted to a noble profession.

As a collective, a law enforcement organization’s vision statement encompasses the reason for individuals being in the organization. They represent the best those working within it can aspire to and the image of what is expected by their community. Ideally, a well-conceived vision statement is grounded in the guiding principles that the people in the

organization see as their touchstones as they move through their working lives. Leaders are responsible for helping to create the vision and modeling the way toward its achievement.

Yet, it is not easy to define a vision. It takes a great deal of soul-searching to decide what an organization should stand for. Anyone who has ever participated in the process of

developing a real future-oriented vision that encompasses the aspirations of a group understands the difficulties involved. However, it is important to remember an assembly or organization that does not have a sense of where it is going will not have its employees pulling in the same direction. Outside the ob-

vious waste, this leads to poor morale and confusion.

It is incumbent for a successful agency to have a clear vision of where it is going. Of itself, it will not guarantee success, but the possibility increases if individuals in the organization collectively understand what they want to be. ♦

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*Dr. David S. Corderman, special agent and chief of the Leadership Development Institute at the FBI Academy, prepared Leadership Spotlight.*

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# The “Special Needs” Exception to the Warrant Requirement

By MARTIN J. KING, J.D.

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**T**he Fourth Amendment to the Constitution protects against unreasonable searches and seizures.<sup>1</sup> To be reasonable, a search generally must be supported by a warrant issued upon probable cause.<sup>2</sup> But, there are exceptions to this general rule.<sup>3</sup> One such exception applies when a search serves “special government needs” beyond the normal needs of law enforcement; in which case, the search may be reasonable despite the absence of a warrant, probable cause, or even

individualized suspicion.<sup>4</sup> The U.S. Supreme Court has recognized that, in certain limited circumstances, the government’s need to discover latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed by conducting a search without any measure of individualized suspicion.<sup>5</sup> A critical factor in the validity of suspicionless searching is the non-law enforcement nature of the special need asserted as a

justification.<sup>6</sup> General crime control programs designed to ferret out criminal activity and gather evidence must be distinguished from those that have another particular purpose, such as the protection of citizens against special hazards.<sup>7</sup>

This article examines the “special needs” exception as applied to situations in which law enforcement directly conducts searches and seizures without individualized suspicion for the purpose of minimizing a risk of harm.<sup>8</sup> In

responding to the realities of terrorism in the post 9/11 period, law enforcement may increasingly be required to adapt traditional legal authorities to confront and combat new threats.<sup>9</sup> In creating new types of security programs to further the “war on terror,” law enforcement agencies, of course, must respect the rule of law and preserve the legal and constitutional protections that define a free society. Where the risk to public safety is substantial and real, suspicionless searches calibrated to that risk may be reasonable; for example, routine searches at airports and entrances at courts and other official buildings have long been upheld.<sup>10</sup> The essential purpose of such security programs is not to detect weapons or explosives or to apprehend those who carry them but to

deter persons carrying such materials from seeking to board or enter.<sup>11</sup> Moreover, the absence of specific threat information does not vitiate either the authority or wisdom of conducting security screening generally for *all* flights. When the threat is to *any* flight, *every* flight may be protected by security searches.<sup>12</sup> Preemptive measures directed toward other likely targets also make sense given the possibility that terrorists continue to plan for large-scale attacks within the United States.<sup>13</sup> There is no reason to believe that specific target information is necessarily, or even frequently, available before a terrorist attack. Nevertheless, where the threat is real and where there is no foolproof method of confining a search or seizure to the few who are potential terrorists, the “special

needs” exception may be employed. Serious threats demand serious and effective responses.

### **Distinguish from a General Interest in Crime Control**

The “special needs” exception that has been used to uphold certain suspicionless searches and seizures is an exception to the general rule that a search must be based on individualized suspicion of wrongdoing.<sup>14</sup> While the “special needs” exception has been recognized in random drug testing cases and a comparable standard has been applied in highway checkpoint cases, the Supreme Court is particularly reluctant to recognize exceptions to the general rule of individualized suspicion where governmental authorities primarily pursue ordinary crime control ends. In *Ferguson v. City of Charleston*, the Court reviewed its prior “special needs” cases emphasizing that, in each case, the justification underlying the search was “divorced from the State’s general interest in law enforcement”<sup>15</sup> and noting that it had never “upheld the collection of evidence for criminal law enforcement purposes.”<sup>16</sup> Accordingly, in *Ferguson*, the Court concluded that the “special needs” doctrine was inapplicable to a state hospital drug abuse policy in which pregnant patients who met



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***Where the risk to public safety is substantial and real, suspicionless searches calibrated to that risk may be reasonable....***

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certain symptom criteria were given drug tests and the results were turned over to the police. Critical to the decision in *Ferguson* was the finding that the hospital policy was developed and enforced in conjunction with the police. Although the drug testing did have a deterrent purpose intended to reduce the incidence of cocaine-addicted mothers and newborns, the central feature of the policy was the collection of evidence resulting in a threat of prosecution designed to coerce patients into treatment. Its purpose was thus indistinguishable from a general interest in crime control and, therefore, was not within the “special needs” exception.<sup>17</sup> In *City of Indianapolis v. Edmond*, the Court found that the primary purpose of the city’s drug interdiction checkpoint program, wherein police officers demanded the drivers’ licenses and registrations, peered into windows, and led drug-sniffing dogs around automobiles, was indistinguishable from the city’s general interest in crime control. The checkpoint program was not justified by the severe and intractable nature of the drug problem and could not be rationalized in terms of highway safety or by its secondary purpose of keeping impaired motorists off the road.<sup>18</sup> The Court reasoned that if a program could be justified by its lawful

secondary purpose—such as deterring drunk driving—authorities would be able to establish roadblocks for virtually any purpose as long as they also included a sobriety check.

**“Only a few types of searches and seizures have been recognized expressly as falling within the ‘special needs’ exception.”**

This line of precedent makes clear that the Fourth Amendment protects against the use of suspicionless searches or seizures undertaken for the specific purpose of gathering evidence for criminal proceedings. Only a few types of searches and seizures have been recognized expressly as falling within the “special needs” exception. In the context of safety and administrative programs, the special need addressed by the governmental program must be well beyond the normal need for law enforcement or a general interest in crime control. The Supreme Court has expressly applied the “special needs” exception to support suspicionless checkpoints, which are seizures under the Fourth

Amendment, designed to address the following interests.

In *Michigan Department of State Police v. Sitz*,<sup>19</sup> the Court held that the removal of drunk drivers pursuant to a sobriety checkpoint program, under which all vehicles passing through the checkpoint were stopped and their drivers briefly examined for signs of intoxication, did not violate the Fourth Amendment. The fact that approximately 1.5 percent of drivers passing through the checkpoint were arrested for alcohol impairment was sufficiently effective to justify the state’s interest in implementing the program. The purpose of the checkpoint was not to gather evidence of criminal activity but to deter drunk driving, which posed a significant public hazard.

The interception of illegal aliens was identified as a “special need” in *United States v. Martinez-Fuerte*.<sup>20</sup> It was constitutional for the Border Patrol, after routinely stopping vehicles at a permanent checkpoint, to refer motorists selectively to a secondary inspection area for questions about citizenship and immigration status, on the basis of criteria that would not sustain a roving patrol stop, and there was no constitutional violation even if such referrals were made largely on the basis of apparent Mexican ancestry. The Court concluded:

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A requirement that stops on major routes inland always be based on reasonable suspicion would be impractical because the flow of traffic tends to be too heavy to allow the particularized study of a given car that would enable it to be identified as a possible carrier of illegal aliens. In particular, such a requirement would largely eliminate any deterrent to the conduct of well-disguised smuggling operation, even though smugglers are known to use these highways regularly.<sup>21</sup>

A roadblock in which officers solicited voluntary cooperation from members of the public in the investigation of a serious crime was permitted in *Illinois v. Lidster*.<sup>22</sup> The roadblock at which all motorists were systematically stopped so that police could ask them for information about a recent fatal hit-and-run accident on that highway and hand each motorist a flyer requesting assistance in identifying the vehicle and driver involved in the accident was deemed reasonable by the U.S. Supreme Court. The relative public concern was grave, and the stop advanced that concern to a significant degree. The stop, which required a wait in line for a few minutes, at most interfered only minimally with liberty of the sort that the Fourth Amendment seeks to

protect. Unlike the checkpoint in *Edmond* or the drug testing policy in *Ferguson*, there was no purpose to gather evidence against the person subjected to the seizure. As the Court noted:

[U]nlike *Edmond*, the context here (seeking information from the public) is one in which, by definition, the concept of individualized suspicion has little role to play. Like certain other forms of police activity, say crowd control

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***For a “special need,” there must be some definitive basis for believing that the existence of a threat...is real and not imagined.***

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or public safety, an information-seeking stop is not the kind of event that involves suspicion, or lack of suspicion, of the relevant individual.<sup>23</sup>

Thus, in *Lidster* the Supreme Court suggested that, in addition to the specifically authorized checkpoints, there are other circumstances—public safety in particular—that may justify a law enforcement

checkpoint where the primary purpose would otherwise, but for some emergency or special hazard, relate to ordinary crime control. The existence of an emergency or special hazard combined with no practical means of addressing the emergency or hazard based on individualized suspicion brings the activity within the “special needs” exception. For example, there is support for the position that appropriately tailored roadblocks set up to prevent explosive or other dangerous devices from entering likely target areas or to catch a dangerous criminal likely to flee by way of a particular route could be conducted without individualized suspicion. As the Court observed in *Edmond*, “the Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up to thwart an imminent terrorist attack.”<sup>24</sup> Further, Justice Ginsburg has observed that “the use of bomb-detection dogs to check vehicles for explosives without a doubt has a closer kinship to the sobriety checkpoints in *Sitz* than to the drug checkpoints in *Edmond*... even if the Court were to change course and characterize a dog sniff as an independent Fourth Amendment search, the immediate, present danger of explosives would likely justify a bomb sniff under the special needs doctrine.”<sup>25</sup>

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In his dissenting opinion in *Sitz*, Justice Stevens remarked that “permanent, nondiscretionary checkpoints could be used to control serious dangers at other publicly operated facilities. Because concealed weapons obviously represent one such substantial threat to public safety, I would suppose that all subway passengers could be required to pass through metal detectors, so long as the detectors were permanent and every passenger was subjected to the same search.”<sup>26</sup>

### **The Threat Must Be Real and Substantial**

The first essential question to ask concerning the validity of a search or seizure under the “special needs” exception is whether there is a substantial governmental need or public interest served by the activity in question. In determining the public necessity requiring a particular type of suspicionless search, the courts have examined the nature and degree of the threat of public danger arguably necessitating the search. In the early 1970s, the courts recognized the public necessity for warrantless airport searches because of the “great threat to hundreds of people”<sup>27</sup> and the “enormous potential for violence”<sup>28</sup> created by the rash of hijackings that occurred during that time. The courts found the nature of the threat

created by hijackings particularly grave in terms of the potential damage to persons or property, disruption of air traffic, and complication of foreign relations.<sup>29</sup> Similarly, in authorizing searches of courthouses and other government buildings, the courts recognized the very real threat to public safety that arose from the “outburst of acts of violence, bombings of federal buildings, and hundreds of bomb threats, resulting in massive evacuations of federal property” throughout the country.<sup>30</sup>

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With respect to other public venues, in the so-called “rock concert” cases, involving searches for bottles, cans, drugs, and alcohol, the courts distinguished the airport and courthouse cases as involving unique circumstances.<sup>31</sup> The searches in these cases were not instituted to uncover weapons or other instruments of mass violence

but, rather, to find either contraband or objects that could be dangerous if broken or used as projectiles. Because the items for which the patrons were searched posed no threat of public danger equivalent to that posed by a bomb or gun, the courts have consistently held that the necessity of searching arena patrons is minimal compared with that for airport searches. Even a search for weapons has been found to be unjustified on a public necessity rationale under circumstances where the potential damage from a single individual’s weapon is not analogous to the mass destruction potential present in an airport or courthouse.<sup>32</sup> For example, a state statute that authorized warrantless searches of all bar patrons for weapons was found to be unconstitutional because “the public necessity addressed by these laws is apparently the danger to individuals in a bar at the hands of one who is armed and intoxicated. This public purpose in no way equals such national concerns as the foreign policy implicated by hijackings, or the threat to the judicial system implicated by courthouse bombings.”<sup>33</sup>

While the Supreme Court has hinted that certain types of suspicionless searches conducted for the purpose of maintaining public safety might be lawful, it has thus far maintained tight control of the



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potentially unlimited sweep of the “special needs” standard under a broadly applied public safety rationale. Searches motivated by only a general, though certainly logical, concern that public events or venues where large crowds gather might be targets of an unidentified terrorist attack are problematic. Line drawing in this area is never easy and can be enormously difficult given the stakes involved. The dilemma has been described by one court as:

[Law enforcement officers] should be commended for their efforts in a difficult, often impossible job, particularly given the post September 11 environment. They are criticized when their actions appear to tilt too much in favor of public safety and infringe upon fundamental rights, and they are criticized when they do not go far enough and a tragedy results.<sup>34</sup>

The city of Columbus, Georgia, attempted to address the public safety dilemma posed by the amorphous nature of the present danger of potential terrorist activity in *Bourgeois v. Peters* when it argued before the Eleventh Circuit that “[l]ocal governments need an opinion that without question, allows nondiscriminatory, low level magnetometer searches at large gatherings...post September 11,

2001, this Court can determine [that] the preventive measure of a magnetometer at large gatherings is constitutional as a matter of law.”<sup>35</sup> The court disagreed, holding that a city policy to conduct magnetometer searches of all protesters prior to entry into the protest area located near a U.S. military-run school at Fort Benning, Georgia, violated the protestors’ Fourth and First Amendment rights.<sup>36</sup> The court

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***There is a substantial basis to believe that the threat posed to urban mass transit systems parallels that of airline travel.***

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refused to extend the “special needs” exception as requested by the city, pointing out that no weapons had been found at the protest site and no protestors had been arrested for acts of violence during the group’s 13-year history.

The City’s position would effectively eviscerate the Fourth Amendment. It is quite possible that both protestors and passersby would be safer if the City were permitted to engage in mass, warrantless,

suspicionless searches. Indeed, it is quite possible that our nation would be safer if police were permitted to stop and search anyone they wanted, at any time, for no reason at all. Nevertheless, the Fourth Amendment embodies a value judgment by the framers that prevents us from gradually trading ever-increasing amounts of freedom and privacy for additional security. It establishes searches based on evidence—rather than potentially effective, broad, prophylactic dragnets—as the constitutional norm. We also reject the notion that the Department of Homeland Security’s threat advisory level somehow justifies these searches.<sup>37</sup>

Even granting that the threat of terrorism is omnipresent simply referring to 9/11 or otherwise to a threat of terrorism generally will not, without more, provide a sufficient basis for restricting the scope of the Fourth Amendment’s protections in any large gathering of people. For example, in *State v. Seglen*, the North Dakota Supreme Court held, citing *Bourgeois v. Peters*, that warrantless pat-down searches of patrons by a state university police officer as they entered an arena to attend a hockey game were not justified by an

increased threat of terrorism or violence.<sup>38</sup> The state argued that the security needs at large arenas and sporting events are similar to airports and courthouses, especially in recent years. However, the court responded that the search could not be justified by a generally increased threat of terrorism and violence; there must be some factual basis to believe that a threat to public safety existed at the arena. “We agree with our colleagues in the Eleventh Circuit. There was no history of injury or violence in this case and nothing in the record supports a suspicionless search of all patrons by a University of North Dakota police officer.”<sup>39</sup>

For a “special need,” there must be some definitive basis for believing that the existence of a threat—terrorist or otherwise—is real and not imagined. As the court declared in *Bourgeois v. Peters*, “In the absence of some reason to believe that international terrorists would target or infiltrate this protest, there is no basis for using September 11 as an excuse for searching the protestors.”<sup>40</sup> Although there must be some reason to believe that a special hazard exists at the venue in question, specific intelligence (meaning a time and place identification of a potential threat) indicating that the venue has been identified as an imminent target is not

required. The standard is not that restrictive but, instead, requires a showing that the threat to public safety is distinct or definite, rather than indefinite or generalized. In the air travel context, for example, the “special need” has been well established. There is a catalog of hijackings and other terrorist incidents involving air transportation that spans decades, and much attention has been

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given to airport security. Routine airport security searches pass constitutional muster because of a demonstrated compelling public interest in curbing air piracy and other dangerous criminal activity known to be directed against that particular mode of transportation.<sup>41</sup> The legality of such searches does not depend on specific intelligence suggesting that a particular flight is potentially subject to imminent attack.

There is a substantial basis to believe that the threat posed to urban mass transit systems parallels that of air travel. As one court observed when upholding administrative security searches of passenger carry-on items prior to boarding Boston city trains and buses, “other transportation systems, including mass transit systems, have become targets of terrorists as well,” and “there is no reason to have separate constitutional analyses for urban mass transportation systems and for airline transportation.”<sup>42</sup> That is, provided the threat is established, the fundamental legal issues should not be affected by the mode of transportation involved. In the Boston case, the trains and buses in question were traveling in the vicinity of the Democratic National Convention. In supporting its program, the city made reference to the Madrid train bombing on March 11, 2004, and the possibility that the attack may have been timed to maximize its disruptive effect on the Spanish elections. This pointed up the potential attractiveness to terrorists of timing an attack against mass transit targets in connection with the convention to have an impact on the democratic process within the United States.<sup>43</sup> In another case in which a New York City subway system container inspection program was found to be

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lawful, city officials also made reference to the train bombing in Madrid, as well as the subway bombings in Moscow on February 6, 2004, and in London on July 7 and 21, 2005, to substantiate the threat.<sup>44</sup> According to the officials, these prior incidents “raised the risk level for the New York City’s subway system” because 1) “they reaffirmed the shift to transportation systems as targets”; 2) “they were carried out by individuals belonging to groups with links to similar groups operating in New York”; and 3) “they were carried out notwithstanding a substantial security system which included extensive video surveillance.”<sup>45</sup>

Mass transportation systems have been described as attractive targets.<sup>46</sup> This is supported by evidence of past attacks on mass transportation systems. While few post 9/11 cases provide guidance in other contexts, it is clear enough that individual circumstances determine when a potential threat will be deemed a credible justification for a “special needs” search. Oblique references to the threat of terrorism generally will not provide adequate justification for mass suspicionless searches at all large gatherings of people. Moreover, an inapposite reference to a specific terrorist event may do little more to substantiate public necessity

than a reference to 9/11 generally. For example, in attempting to justify a program where all protestors’ bags were searched as a condition of entry to a demonstration site, New York City officials once again pointed to the Madrid train bombing and the use of knapsacks in that attack. Without deciding the legality of the search program, the court did

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***The standard is not that restrictive but, instead, requires a showing that the threat to public safety is distinct or definite, rather than indefinite or generalized.***  
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note that “the circumstances of the Madrid bombings differ from an organized public demonstration” and a “bag search in the context of the exercise of constitutionally protected speech calls for a different analysis.”<sup>47</sup> This different analysis was required, in part, because the threat evidence presented did not adequately relate to an ostensibly peaceful protest and due, in part, to the potential chilling effect the

government’s action may have on activities protected by the First Amendment. The court, nevertheless, said that “it must be emphasized, however, that the ban on searches at demonstrations is not categorical and may be justified under different circumstances.”<sup>48</sup> The “special needs” exception must be based on a real and substantial threat to public safety.<sup>49</sup>

### **Consider the Relative Intrusiveness of the Search**

The constitutionality of “special needs” seizures or searches is determined by balancing the gravity of the public interest they serve, the degree to which they advance that interest, and the degree to which they interfere with individual freedom and privacy.<sup>50</sup> In addition to limiting the discretionary nature of the search, the type and degree of search conducted must be considered. Guidelines for establishing that the level of intrusiveness of a “special needs” search is constitutionally permissible should include consideration of whether:

1) *The location, time, and duration of the checkpoint is established—preferably as a written policy or plan—by supervisory personnel, rather than as a matter of discretion exercised by individual officers in the field.* Where the location of a fixed checkpoint is not



chosen by officers in the field but by officials responsible for making overall decisions as to the most effective allocation of limited enforcement resources, there is less opportunity for arbitrary, abusive, or harassing activity.<sup>51</sup> The written plan should describe the inspection method and define those items prohibited. Supervision should be exercised over the activities of officers in the field to ensure that they remain within the plan.<sup>52</sup>

2) *Advance warning of the official nature of the checkpoint is given.*<sup>53</sup> Notice is a significant factor for at least two reasons. It tends to reduce the subjective anxiety that might otherwise be experienced by individuals asked to submit to a search if they had no reason to anticipate the inspection and also provides an opportunity for persons who do not want to submit to the inspection to avoid the venue. While notice always reduces intrusiveness, it may not always translate into implied consent to search. Submission to apparent authority is not voluntary consent to search. Therefore, a showing of acquiescence based on the presence of “conspicuously posted signs” warning persons that they are “subject to search” will not necessarily establish consent.<sup>54</sup>

3) *The seizure of persons is for a minimal length of time required to achieve the purpose*

*of the checkpoint.*<sup>55</sup> The search must be limited in scope and duration. In the checkpoint cases, waiting in line for a few minutes followed by a brief and minimally intrusive exchange with officers has been upheld.<sup>56</sup>



4) *Systematic nondiscretionary criteria is used for stopping persons and inspection of their property.*<sup>57</sup> Where the decision to search is left entirely to the discretion of the searching officers, courts have repeatedly found that the intrusion can be particularly great. The common rationale behind these cases is that when the search procedure is not applied indiscriminately but only to isolated individuals at the officer’s discretion, the search potentially causes fear, surprise, and embarrassment to the individual subjected to the search that otherwise could be avoided.<sup>58</sup>

5) *The search only minimally intrudes on privacy interests.* It is a well-established U.S. Supreme Court doctrine that “even a limited search of the person is a substantial invasion of privacy.”<sup>59</sup> A search of persons entering a public building or other public venue, including searches into parcels, handbags, and other items carried by persons, is a warrantless search unreasonable per se under the Fourth Amendment unless it falls within one of the recognized exceptions to the warrant requirement.

The “stop and frisk” or *Terry* exception to the warrant requirement is based on a reasonable suspicion of criminal activity and that the person detained is armed and poses an imminent danger to the officer or to the safety of other persons.<sup>60</sup> Searches not based on reasonable suspicion do not fall within the *Terry* exception and there appears to be no case that has expressly permitted a frisk or pat-down search of a person under the “special needs” exception. Other techniques, such as magnetometers and limited container inspection programs, have been expressly permitted.

The search must be limited so that it does not sweep too broadly, and the government must demonstrate how a particular need is addressed by the type of search employed.

The use of a magnetometer is generally considered to be less intrusive than physically inspecting personal property. For example, in prohibiting a bag search program a court ruled:

[T]he NYPD is hereby enjoined from searching the bags of all demonstrators without individualized suspicion at particular demonstrations without the showing of both a specific threat to the public safety and an indication of how blanket searches could reduce that threat. Less intrusive searches, such as those involving magnetometers, do not fall within the scope of the injunction.”<sup>61</sup>

In turn, while the visual inspection of personal property is more than a minimally intrusive search, it is ordinarily considered to be less intrusive than a pat down of a person’s outer clothing.<sup>62</sup> The means employed must bear a close and substantial relation to the government’s interest in pursuing the search.<sup>63</sup>

6) *The program is reasonably effective.* Courts will limit the inquiry in this area to whether the search is a reasonably effective method of deterring the prohibited conduct.<sup>64</sup> It is not necessary to present statistical evidence, which is often unavailable, to support the program. Nonstatistical expert

testimony can afford a sufficient basis to demonstrate the deterrent effect of a “special needs” search.<sup>65</sup>

## Conclusion

As one court has recently observed, “the need for implementing counterterrorism measures is indisputable, pressing, ongoing, and evolving.”<sup>66</sup> Nevertheless, to be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing. The use of suspicionless searches for the purpose of deterring a possible

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***In addition to limiting the discretionary nature of the search, the type and degree of search conducted must be considered.***

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terrorist attack will be carefully examined. To fall within the “special needs” exception, a deterrent program must address a special need beyond the ordinary needs of law enforcement, the governmental interest behind the program must be compelling, the program must only intrude minimally upon privacy interests, and the program must be reasonably effective. ♦

## Endnotes

<sup>1</sup> “The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend IV.

<sup>2</sup> *Nat’l Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665, 109 S. Ct. 1384, 103 L.Ed.2d 685 (1989).

<sup>3</sup> *Ferguson v. City of Charleston*, 532 U.S. 67, 81 n. 15, 121 S. Ct. 1281, 149 L.Ed.2d 205 (2001).

<sup>4</sup> *Von Raab*, 489 U.S. at 666; *Skinner v. Ry. Labor Executives’ Ass’n*, 489 U.S. 602, 624, 109 S. Ct. 1402, 103 L.Ed.2d 639 (1989).

<sup>5</sup> *Bd. of Educ. of Indep. Sch. Dist. No. 92 v. Earls*, 536 U.S. 822 (2002) (Policy requiring all students who participate in competitive extracurricular activities to submit to drug testing was a reasonable means of furthering the school district’s important interest in preventing and deterring drug use among its school children. Interest was important, students had lowered expectation of privacy, degree of intrusion was negligible given method of urine sample collection, and the consequence of a failed drug test was to limit student’s privilege of participating in extracurricular activities.); *cf. Chandler v. Miller*, 520 U.S. 305 (1997) (Requirement that all candidates for state office pass drug test did not fit within the closely guarded category of constitutionally permissible suspicionless searches. Alleged incompatibility of unlawful drug use with holding high state office did not establish a special need; there was no evidence of drug problems among the state’s elected officials, those officials typically did not perform high-risk, safety-sensitive tasks, and required certification immediately aided no interdiction effort.); *See also, Griffin v. Wisconsin*, 483 U.S. 868 (1987) (Allowed a warrantless entry by a probation officer into a probationer’s residence to investigate the suspected presence of contraband because of the “special needs” of law enforcement. Need to act on less than probable cause due to probationary status.). *Wyman v. James*, 400 U.S. 309 (1971) (Allowed a warrantless entry and visit by a social case worker to determine compliance with welfare requirements as a reasonable administrative tool and not a search in the traditional criminal law context of the Fourth Amendment.).

<sup>6</sup> *Ferguson*, 532 U.S. at 79; *New Jersey v. TLO*, 469 U.S. 351, 105 S. Ct. 733 (1985)

(Blackmun, J. concurring) (stating that an agency may invoke the “special needs” exception “in those exceptional circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable”).

<sup>7</sup> *City of Indianapolis v. Edmond*, 531 U.S. 32, 44, 121 S. Ct. 447, 148 L.Ed. 333 (2000).

<sup>8</sup> This article addresses the legality of law enforcement activity constituting a search or seizure within the meaning of the Fourth Amendment conducted without individualized suspicion of criminal activity. Searches and seizures by government entities other than law enforcement pursuant to the “special needs” doctrine are not addressed. Further, the “administrative search” exception (warrantless inspections and searches of pervasively regulated businesses; see, e.g., *Donovan v. Dewey*, 452 U.S. 594 (1981)) and the “community caretaking” exception (seizures of persons based on individualized reasonable suspicion that a detention is necessary to address a hazardous condition or to otherwise minimize the likelihood of disorder); see, e.g., *Cady v. Dombroski*, 413 U.S. 433 (1973), *U.S. v. Garner*, 416 F.3d 1208 (10th Cir. 2005) although closely related to the “special needs” exception, are not covered in this article.

<sup>9</sup> See, e.g., *In re Sealed Case*, 310 F.3d 717, 744 (2002) (“After the events of September 11, 2001, though, it is hard to imagine greater emergencies facing Americans than those experienced on that date.”).

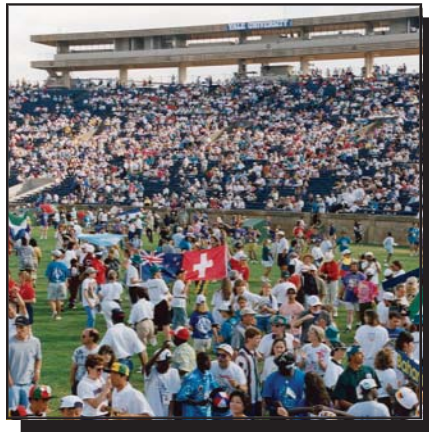
<sup>10</sup> See *Von Raab* 489 U.S. at 1395-1396, and n.3. (“The point is well-illustrated also by the federal government’s practice of requiring the search of all passengers seeking to board commercial airliners, as well as the search of carry-on luggage without any basis for suspecting any particular passenger of an untoward motive.”); *United States v. Yang*, 286 F.3d 940, 944 n.1 (7th Cir. 2002) (“the events of September 11, 2001, only emphasize the heightened need to conduct searches at this nation’s international airports”); *U.S. v. Marquez*, 410 F.3d 612, 616 (9th Cir. 2005) (“Airport screening of passengers and their baggage constitute administrative searches and are subject to the limitations of the Fourth Amendment.”); *U.S. v. Hartwell*, 436 F.3d 174 (3rd Cir. 2006).

<sup>11</sup> See *United States v. Davis*, 482 F.2d 893, 908 (9th Cir. 1973); *Marquez*, 410 F.3d at 616 (“Little can be done to balk the malefactor after weapons or explosives are successfully smuggled aboard, and, as yet, there is no foolproof method of confining the search to the

few who are potential hijackers.”); *Hartwell*, 436 F.3d at 179 (“As this court has held, ‘absent a search there is no effective means of detecting which airline passengers are reasonably likely to hijack an airplane.’” (citing *Singleton v. Comm’r of Internal Revenue*, 606 F.2d 52 (3rd Cir. 1979)).

<sup>12</sup> See *American-Arab Anti-Discrimination Committee v. Mass. Bay Transp. Auth.*, 2004 WL 1682859 (D. Mass 2004) (Not reported in F. Supp 2d).

<sup>13</sup> Certainly, preemptive measures can include activity that does not implicate the Fourth Amendment. Police presence that does not constitute a search or seizure is one example. See, e.g., Lena H. Sun, *Police, Dog Teams Check Trains, Alarming Some Metro Riders*, The Washington Post, March 30, 2006, at B3 (“Metro Transit Police Chief Poly L. Hanson said police wanted to be more noticeable after al-Qaeda leader Osama bin Laden’s voice was heard on an audiotape in late January threatening attacks in the United States.”).



<sup>14</sup> *Edmond*, 531 U.S. at 54 (J. Rhenquist dissenting).

<sup>15</sup> *Ferguson* at 79-80, 81 n.15.

<sup>16</sup> *Id.* at 84 n.20.

<sup>17</sup> *Id.* at 79.

<sup>18</sup> *Edmond*, 531 U.S. at 44 (“We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes.”).

<sup>19</sup> 496 U.S. 444 (1990).

<sup>20</sup> 428 U.S. 543 (1976).

<sup>21</sup> *Id.* at 557.

<sup>22</sup> 540 U.S. 419 (2004).

<sup>23</sup> *Id.* at 424-425.

<sup>24</sup> *Edmond*, 531 at 44.

<sup>25</sup> *Illinois v. Caballes*, 543 U.S. 405, 424-425 (J. Ginsburg, dissenting).

<sup>26</sup> *Sitz*, 496 U.S. at 474 (J. Stevens, dissenting).

<sup>27</sup> *United States v. Albarado*, 495 F.2d 799, 806 (2nd Cir. 1974).

<sup>28</sup> *Davis*, 482 F.2d at 910.

<sup>29</sup> *Id.*

<sup>30</sup> See *Downing v. Kunzig*, 454 F.2d 1230, 1231 (6th Cir. 1972).

<sup>31</sup> See *Gaioni v. Folmar*, 460 F. Supp. 10, 13 (D.C. Ala. 1978); *Collier v. Miller*, 414 F. Supp. 1357 (D.C. Tex. 1976).

<sup>32</sup> See *Ringe v. Romero*, 624 F. Supp. 417, 422 (W.D. La. 1985) (Patrons of “Rod’s Wammer-Jammer Motorcycle Shop, Bar and Lounge” were searched pursuant to a Louisiana statute and similar city ordinance revealing nine knives and one gun.).

<sup>33</sup> *Id.*

<sup>34</sup> See *Bourgeois v. Peters*, 387 F.3d 1303, 1311 n.8. (11th Cir. 2004) (quoting the district court).

<sup>35</sup> *Id.* at 1311.

<sup>36</sup> Public safety programs that indirectly place restrictions on First Amendment protected activities can raise complex legal issues outside the scope of this article. See, generally, *Crowd Control: The Troubling Mix of First Amendment Law, Political Demonstrations, and Terrorism*, 73 GEO. WASH. L. REV. 395 (2005); *Balancing the Right to Protest in the Aftermath of September 11*, 40 HARV. C.R.-C.L. REV. 327 (2005); *Speech and Spatial Tactics*, 84 Tex. L. Rev. 581 (2006).

<sup>37</sup> *Peters*, 387 F.3d at 1312.

<sup>38</sup> 700 N.W. 2d 702, 708 (N.D. 2005).

<sup>39</sup> *Id.*

<sup>40</sup> *Peters*, 387 F.3d at 1311.

<sup>41</sup> See, e.g., *U.S. v. Doe*, 61 F.3d 107, 109-110 (1st Cir. 1995). Note that an irrevocable implied consent theory also has been used to uphold the constitutionality of security screening in the airport context. See *Torbet v. United Airlines, Inc.*, 298 F.3d 1087 (9th Cir. 2002) (Airport security regime upheld to the extent that it is confined to detecting weapons or explosives. Passenger must elect not to fly, rather than submit to search, and, to avoid search, must elect not to fly prior to placing bag on X-ray machine. Thereafter, implied consent cannot be withdrawn for subsequent random opening of the bag.); *U.S. v. Aukai*, 440 F.3d 1168 (9th Cir. 2006) (Citing *Torbet*, implied consent to secondary screening cannot be revoked after submitting to initial screening



because it would undermine the essential deterrent purpose of airport screening.)

<sup>42</sup> *Arab-American Anti-Discrimination Committee*, 2004 WL 1682859 at 2.

<sup>43</sup> *Id.*

<sup>44</sup> *MacWade v. Kelly*, 2005 WL 3338573, at 4 (S.D.N.Y. 2005) (Slip Op.).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* (Police Commissioner Michael Sheehan testified that “about 40 to 50 percent around the world, depending on how you count terrorist acts, are directed against transportation systems traditionally, and in New York City, our subway system, in my view, is a prime target for terrorists.”).

<sup>47</sup> *Stauber v. City of New York*, 2004 WL 1663600 at 1, *amending*, 2004 WL 1593870 (S.D.N.Y. 2004) (Not reported in F. Supp. 2d.).

<sup>48</sup> *Stauber*, 2004 WL 1593870 at 32.

<sup>49</sup> *Chandler*, 523 U.S. at 323.

<sup>50</sup> *Lidster*, 540 U.S. at 427 (citing *Brown v. Texas*, 443 U.S. 47, 51, 99 S. Ct. 2637, 61, 61 L.Ed.2d. 357 (1979)).

<sup>51</sup> *See Martinez-Fuerte*, 428 U.S. at 559.

<sup>52</sup> *See Delaware v. Prouse*, 440 U.S. at 648 (Suspicionless searches and seizures must be carried out according to a plan embodying explicit neutral limitations on the conduct of individual officers.); *Arab-American Anti-Discrimination Committee*, 2004 WL 1682859 at 4 (“The written plan prescribes the inspection method and defines those items that are deemed to be ‘prohibited.’ The plan provides for supervision of the officers who actually do the inspection.”).

<sup>53</sup> *See Martinez-Fuerte*, 428 U.S. at 558-559 (Notice reduces the intrusiveness of the seizure because “motorists can see other vehicles are being stopped, he can see visible signs of the officer’s authority, and he is much less likely to be frightened by the intrusion” (internal quotations omitted)); *Stauber*, 2004 WL 1593870 at 31 (“the NYPD has given no advance notice of its intent to perform bag searches at particular demonstrations.”).

<sup>54</sup> *Seglen*, 700 N.W. 2d at 709 (The North Dakota Supreme Court held that university police officer’s warrantless pat-down search of a state university student as the student entered an arena to attend a hockey game was not justified by consent exception to the warrant requirement. There was no affirmative conduct indicating consent, mere failure to object is not sufficient to support finding of voluntary consent particularly where signs do not provide advice of a right to refuse.); *Nakamoto v. Fasi*, 635 P.2d 946 (Haw. 1981) (Where patron was

stopped by uniformed security guard at entry to city-owned arena and was told that guard had to inspect contents of her handbags for bottles or cans before she would be allowed to enter but was not told that she had a right to refuse inspection, there was no valid consent to inspection.).

<sup>55</sup> *See, e.g., Downing v. Kunzig*, 454 F. 2d 1230, 1232 (6th Cir. 1972) (Upholding bag searches at federal buildings that were “cursory in nature and made for the strictly limited purpose of determining that no explosives or dangerous weapons were transported into the building.”).

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***The search must be limited so that it does not sweep too broadly, and the government must demonstrate how a particular need is addressed by the type of search employed.***

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<sup>56</sup> *See Sitz*, 496 U.S. at 448 (upholding delays of 25 seconds; *Lidster*, 540 U.S. at 427 (upholding a wait in line of “a few minutes at most” and contact with police that “lasted only a few seconds”).

<sup>57</sup> *See Arab-American Anti-Discrimination Comm.*, 2004 WL 1682859 at 4 (“All riders on the buses and trains about to transit the security zone are subject to the inspection, so the officers do not exercise any choice or judgment about whose bags to inspect”); *MacWade*, 2005 WL 3338573 at 19 (“Subway passengers are randomly selected for a bag search pursuant to a selection formula the rationale for which is determined by a supervisor based on neutral factors. Officers have little or no discretion in selecting individuals for inspection except to determine whether a bag or container is large enough to contain an explosive device” (internal citations omitted)).

<sup>58</sup> *See Prouse*, 440 U.S. at 661 (“standardless and unconstrained discretion is the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some extent.”).

<sup>59</sup> *T.L.O.*, 105 S. Ct. at 741 (citing *Terry v. Ohio*, 392 U.S. 1, 24-25).

<sup>60</sup> *Terry*, 392 U.S. at 30-31.

<sup>61</sup> *See Stauber*, 2004 WL 1593870 at 33-34 (The court cited *Wilkinson v. Forst*, 832 F.2d 1330 (2nd Cir. 1987) in which the Second Circuit held that mass pat-down searches of persons entering rally sites violated the Fourth Amendment but that police could conduct general magnetometer searches at sites of rallies without regard to standards of reasonable suspicion or probable cause.).

<sup>62</sup> *See Bond v. U.S.*, 529 U.S. 334, 337, 134 S. Ct. 1462, 146 L.Ed.2d 365 (2000) (The physical manipulation of the outside of a bus passenger’s soft luggage implicated the Fourth Amendment. The court distinguished “visual as opposed to tactile, observation”); *Seglen*, 700 N.W. 2d at 709 (citing dicta in *Jensen v. City of Pontiac*, 317 N.W. 2d 619 (1982), “[a] physical pat-down search by a guard is more intrusive than a limited visual search”).

<sup>63</sup> *MacWade*, 205 WL 3338573 at 7 (Officer training to implement a New York City subway system container inspection program advised officers not to “inspect wallets, purses or other containers that are too small to contain an explosive device, intentionally look for other contraband or read or attempt to read any written or printed material or remove individuals a significant distance from the entry point to transit” (internal quotations omitted)).

<sup>64</sup> *Id.* at 18.

<sup>65</sup> *Id.* at 1 n.1, 10 (“Commissioner Cohen is clearly an expert in the field of terrorism and counterterrorism.... His testimony that the Container Inspection Program has a deterrent effect which is ‘embedded in the uncertainty regarding where and when an inspection will occur’ was both credible and persuasive.”).

<sup>66</sup> *Id.* at 1.

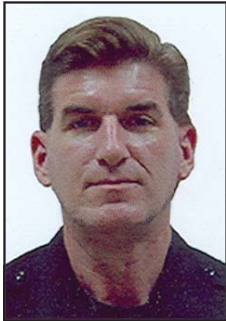
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***Law enforcement officers of other than federal jurisdiction interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.***

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# The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



Officer Cochran



Officer Stubbs

While on foot patrol, Officer Terry Cochran of the Memphis, Tennessee, International Airport Police Department observed an airport employee in physical distress. Recognizing the signs of cardiac arrest, he requested paramedics and asked a nearby worker to retrieve an automated external defibrillator (AED). While waiting, Officer Cochran provided medical care for the unconscious victim. When the AED came, Officer Cochran, along with newly arrived Officer Billy Stubbs, noticed that the individual now had lost vital signs. They administered one electrical pulse from the device and continued to provide CPR until medical personnel responded. The subject regained vital signs, was transported to a local hospital, and later recovered. The quick, professional, and unselfish actions of these two officers saved this individual's life.



Officer Scott

Officer Jason Scott of the Salinas, California, Police Department responded to a residential fire. When he arrived, he noticed flames in the windows and the area around the front door. Neighbors advised him that an elderly woman lived there and could be inside. Immediately, Officer Scott forced his way into a side entrance and began calling for the victim. After hearing cries for help, he crawled under the thick smoke to a rear bedroom, located her, and carried her outside to safety. She later recovered. The brave actions of Officer Scott saved the life of this elderly woman.

Nominations for the **Bulletin Notes** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.



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## Patch Call



The Pennsylvania State Capitol Police is the second oldest state police organization in the United States. The agency's patch commemorates a century of service to the commonwealth.



The patch of the Lakeview, Oregon, Police Department has a depiction of a cowboy, representing the cattle industry, and the abundant deer and antelope in the area. Also featured is a reference to the DARE program.